Supreme Court, U.S.
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No. 93-253

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

DEBRA J. GRUNWALD, *et al.*,
Petitioners,
v.
SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF RESPONDENT SAN BERNARDINO TEACHERS ASSOCIATION IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. When a union that represents public school teachers lawfully may charge objecting nonmembers an annual agency fee of $220 through a system of ten monthly payroll deductions (corresponding to a ten-month school year during which teachers are paid), does the First Amendment require that $22 be deducted each month, or can the union deduct $30 each month (which is the amount of the monthly dues deduction for union members) and make a lump-sum payment of the $80 difference to objecting nonmembers after the third monthly deduction, which is well before the total amount deducted has reached the chargeable $220?

2. When (a) a union that represents public school teachers conducts a timely hearing to determine the amount of the annual agency fee to be paid by objecting nonmembers for a school year, (b) all nonmembers receive an adequate explanation of the basis for the agency fee sufficiently in advance of the hearing to enable them to file objections and prepare for the hearing, and (c) the union places all agency fee payments collected from nonmembers into an escrow account until the explanation has been received and the nonmembers have had an opportunity to object, is the First Amendment violated because the first monthly deduction is made a few weeks before the explanation of the basis for the agency fee has been received?

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BRIEF OF RESPONDENT SAN BERNARDINO TEACHERS ASSOCIATION IN OPPOSITION

COUNTERSTATEMENT OF THE CASE

Petitioners are public school teachers employed by respondent San Bernardino City Unified School District ("District") in a bargaining unit for which respondent San Bernardino Teachers Association ("SBTA") is recognized under California law as the exclusive collective bargaining representative. During the 1987-88 school year, petitioners chose not to become members of SBTA, and, pursuant to the collective bargaining agreement between SBTA and the District, petitioners were required to pay to SBTA an agency fee for that school year.[1] In this case,

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[1] SBTA is affiliated with the California Teachers Association ("CTA") and the National Education Association ("NEA") at the state and national levels, respectively. A portion of the agency fees

petitioners challenge the constitutionality of certain aspects of SBTA's agency fee collection procedure.

In *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 310 (1986), this Court held that:

> the constitutional requirements for [a public sector] Union's collection of agency fees include an adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending.

Petitioners do *not* contend that they were denied any of the three procedural requisites specified in *Hudson*,[2] but petitioners assert that SBTA's agency fee collection procedure is constitutionally flawed in two other respects:

1. Although petitioners were *not* required to pay, even into escrow, more than the amount they lawfully could be charged *for the school year*, petitioners complain because their first three monthly payroll deductions were made in amounts equal to the deductions for union membership dues, rather than at

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involved in this case was paid to CTA and NEA. Except where context requires otherwise, we will refer to CTA, NEA and SBTA collectively as "SBTA."

[2] The district court found that "the information provided to nonmembers [was] adequate," Order re Preliminary Injunction at 2 (June 15, 1987), and petitioners have not challenged that finding. SBTA provided objectors with a hearing before an impartial arbitrator selected by the American Arbitration Association. Appendix to Petition for Certiorari ("Pet. App.") at 3a. Petitioners do not challenge the fairness or timeliness of the hearing. Nor is there any dispute as to the adequacy of the escrow arrangement: SBTA placed *all* of the agency fees paid by nonmembers into escrow until the nonmember accepted the union's calculation of the amount to be paid, or, if the nonmember challenged SBTA's calculation, until the challenge was resolved. Pet. App. at 6a. *See infra* at 3-4.

a reduced level. Petition for a Writ of Certiorari ("Pet.") at 3-4 and n.3, 12-25.

2. Although petitioners do not dispute that the hearing provided pursuant to *Hudson* properly may be held after the monthly payroll deductions have begun, they contend that the notice to nonmembers explaining the basis for the agency fee and affording nonmembers the opportunity to object must precede the first monthy payroll deduction. In this case, the notice was not distributed until "after the first fee deductions occur[red]." Pet. at 3, 25-29.

The facts bearing on these two issues, as set forth in a Stipulation submitted jointly by the parties in the district court, are as follows.

The annual dues for members of SBTA are deducted by the District on a 10-month basis, corresponding to the 10-month school year during which teachers are paid. The first dues deduction occurs on or about September 30, and the last deduction on or about June 30. Pet. App. at 3a. Teachers in the relevant bargaining unit who choose not to join SBTA are required to pay an annual agency fee, and these fees likewise are deducted by the District on a 10-month basis. Each monthly agency fee deduction is equal in amount to the monthly membership dues deduction—but, as will be described below, any nonmember who objects to paying the full amount of the annual agency fee is entitled to receive an offsetting lump sum payment from SBTA before the total amount deducted has exceeded the chargeable portion of the fee. *Id.*

From the start of the school year, *all* agency fees are placed in an interest-bearing escrow account. *Id.* And, no later than October 15—*i.e.*, within two weeks of the first monthly deduction—all nonmembers receive a notice advising them of their right to pay less than the full agency fee (*i.e.*, to pay less than the equivalent of membership dues). The notice explains the procedure to be followed if a nonmember wishes to pay a reduced amount, and

presents SBTA's calculation of the reduced amount that it believes lawfully may be charged to objectors, together with an explanation of how that amount was determined. *See supra* note 2.

The parties stipulated that SBTA had considered sending the notices at an even earlier point in the school year, but this "was considered basically unworkable, given the school year nature of employment of the teachers." Stipulation at 16. The parties' Stipulation elaborated on that point as follows:

> In schools virtually all teachers are employed for the entire school year and virtually all new employees begin work at the same time—the start of the school year around September 1. If notices were sent prior to the start of the school year several problems would result. Many notices would go to the wrong address since approximately 8% of teachers change addresses each summer and the notices are sent, if possible, to their home addresses. Changed addresses for teachers are typically not available from the districts until the end of the first month of school. In addition, teachers for whom CTA has only a school address would not receive a notice. Many unnecessary notices would be sent at great expense to teachers who had retired or changed school districts. Finally, new teachers are typically given 30 days to decide whether to join the union or become a fee payer. [*Id.*]

Thus, as the court of appeals recognized, *see* Pet. App. at 9a-10a, in effect the notices are sent within two weeks after the identities and home addresses of the nonmembers for the school year can be determined.

Under the procedure set out in the notice, nonmembers who object to paying the full agency fee are given two options. They may accept SBTA's calculation of the chargeable amount, in which case SBTA gives them, by December 7, a lump sum payment equal to the nonchargeable portion of the fee *for the entire school year*. *See* Pet. App. at 3a. Or, if they prefer, objectors may

elect to challenge SBTA's calculation of the chargeable amount before an impartial arbitrator, in which case a hearing is held, the arbitrator renders his or her decision, and SBTA then makes a lump sum payment equal to the nonchargeable portion of the fee as determined by the arbitrator, again *for the entire school year. Id.* at 3a-4a.

In short, as the parties' Stipulation put it, SBTA's agency fee collection procedure provides "an *advance* rebate for the entire year which, in effect, operates as an *up-front* reduction in the fee amount for the remainder of the school year." Stipulation at 4 (emphasis added).

For the 1987-88 school year, those objecting nonmembers who accepted SBTA's calculation of the chargeable amount received a lump sum payment equal to the nonchargeable portion of the full annual agency fee after there had been three monthly payroll deductions —*i.e.*, after they had paid 30% of the full fee. Those objecting nonmembers who challenged SBTA's calculation in arbitration received a lump sum payment equal to the nonchargeable portion of the full annual agency fee as determined by the impartial arbitrator after there had been seven monthly deductions—*i.e.*, after they had paid 70% of the full fee. *See* Pet. at 4 n.3.[3] The impartial arbitrator determined that more than *80%* of the full agency fee was properly chargeable to objecting fee payers, Exhibit 14 to Stipulation at 260, and petitioners do not challenge that determination. Thus, *no objecting nonmember paid, even into escrow, more than the chargeable portion of the full annual agency fee,* and petitioners are simply wrong when they assert that SBTA received "sums the union admits it is not entitled to keep." Pet. at 14.

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[3] The SBTA procedure calls for this post-arbitration payment to be made by mid-February, Pet. App. at 3a-4a—*i.e.*, at a point when an objector has paid 50% of the fee—but during the 1987-88 school year there was a delay and the payment was not made until mid-April. *See* Pet. at 4 n.3.

The parties' Stipulation explained why SBTA had adopted a system of uniform monthly deductions for union members and nonmembers, coupled with advance lump-sum payments for objecting nonmembers, rather than a system under which each monthly deduction would be slightly lower for an objecting nonmember than for a dues payer. The Stipulation stated:

> In developing the procedure CTA also considered having objecting fee payers pay a reduced fee consistent with CTA's estimate of chargeable expenditures. This procedure was not adopted for several reasons. CTA had used a reduced fee system in the past but experienced problems because school districts had refused to deduct a different amount for agency fees than for member dues. Moreover, use of a reduced fee would require that *Hudson* notices be sent at least 30 days *prior* to the first deduction so the identities of the objecting fee payers could be determined. This was considered unworkable as discussed above. The only other option is to send the notices on October 15 when identities of the year's fee payers and their addresses are known, and to delay collection of the fee until the end of December when the identities of objectors who would be entitled to a reduced fee are known. This would deprive CTA, NEA and affiliated locals of any agency fees for four months each year. In addition, if collection is delayed for four months, fee payers would then have to pay a much larger amount each month in fees for the rest of the school year than members pay in dues in order to recoup amounts owed for the four months when deductions did not take place.

Stipulation at 17 (emphasis in original).

REASONS FOR DENYING THE WRIT

Petitioners challenge SBTA's agency fee collection procedure as having failed to provide an "advance reduction," Pet. at 12-25, and an "advance notice," *id.* at 25-29. According to petitioners, these challenges present questions of "exceptional importance," *id.* at 8, as to which the decision below conflicts with decisions of this Court and of other circuits. As we now demonstrate, there is no merit to this assertion. The questions presented by petitioners are trifling, and are of no constitutional significance. Nor is there any conflict with decisions of this Court or other circuits on the questions presented here. The case does not warrant review by this Court on any ground.

I. THE "ADVANCE REDUCTION" ISSUE

A. Petitioners' "advance reduction" argument is in reality a dispute over which of two constitutionally acceptable payment schedules should be used to collect the chargeable portion of the annual agency fee from objecting nonmembers.

The financial impact on objecting nonmembers of the payment schedule used by SBTA is reflected in the following table, using the example given by the court of appeals, in which the full amount of the agency fee is $300 and the amount chargeable to objectors is $220: [4]

[4] *See* Pet. App. at 2a-6a. In this illustration the chargeable amount ($220) constitutes 73% of the full fee ($300). As we have noted, for the 1987-88 school year the impartial arbitrator determined that more than 80% of the full fee was properly chargeable to objectors. The point made in the text would not change if the hypothetical numbers were replaced by the actual numbers.

Month	Amount Deducted Each Month from Objecting Nonmembers' Salary	Lump Sum Payment Made by SBTA to Objecting Nonmembers	Cumulative Amount Paid by Objecting Nonmembers
September	$30		$30
October	$30		$60
November	$30		$90
December	$30	$80	$40
January	$30		$70
February	$30		$100
March	$30		$130
April	$30		$160
May	$30		$190
June	$30		$220

Petitioners assert that this "dues-equivalent fee deduction" schedule, Pet. at 18 n.20, fails to pass constitutional muster. According to petitioners, the First Amendment requires that the $220 annual agency fee be collected in the manner shown below:

Month	Amount Deducted Each Month from Objecting Nonmembers' Salary	Cumulative Amount Paid by Objecting Nonmembers
September	$22	$22
October	$22	$44
November	$22	$66
December	$22	$88
January	$22	$110
February	$22	$132
March	$22	$154
April	$22	$176
May	$22	$198
June	$22	$220

As can readily be seen, although objecting nonmembers would under petitioners' payment schedule pay slightly less during the first three months of the school year than they would under SBTA's payment schedule (*i.e.*, $66 as compared to $90), petitioners' schedule entails *higher* cumulative payments for the next *six* months.[5]

[5] On balance, as the court of appeals recognized, under SBTA's payment schedule the objecting nonmember actually "makes a

These minimal differences in the timing of the financial impact of the two payment schedules surely do not give rise to a question of "exceptional importance," Pet. at 8, deserving of review by this Court. Because SBTA does not under *either* payment schedule *collect*, much less expend, even "three pence" that it "is not entitled to keep," Pet. at 14, the choice between the two payment schedules does not in any way implicate First Amendment concerns.

B. Asserting that this is a case in which SBTA "improperly seized" money to which it was not entitled, and then repaid the money belatedly, Pet. at i, petitioners claim that the decision below conflicts with the decisions of this Court and of other circuits which, according to petitioners, have declared such a seizure impermissible. *Id.* at 12-25. Because petitioners have mischaracterized the nature of SBTA's agency fee collection procedure, their exegesis is directed at an issue not presented here.

There is, to be sure, a disagreement among the circuits as to whether a union may collect from objecting nonmembers an agency fee that exceeds the amount properly chargeable to objectors, and then refund the difference at some later point. Proceeding from the premise that the "constitutional right [at stake is a right] to 'prevent the Union's *spending* a part [of the objectors'] required service fees to contribute to political candidates and to express political views unrelated to its duties as

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profit" compared to what would transpire under petitioners' approach. Pet. App. at 6a and n.3. As the opinion notes, even a fee payer who challenges SBTA's calculation in arbitration and therefore receives a lump sum payment later in the year "still makes a profit, albeit a less munificent one." *Id.* (The "profit" is actually somewhat greater than the court assumed, because the lump sum payment made to objectors includes interest. *See* Exhibit 10 to Stipulation at 2). In any event, petitioners' Questions Presented refer to the fee payers who receive the lump sum payment after "two and one-half months," *see* Pet. at i, and that is the situation we have discussed in text.

exclusive bargaining representative,'" *Hudson*, 475 U.S. at 301-02 (emphasis added), and that no violation can arise from "the mere collection of funds" which are not spent, *Machinists v. Street*, 367 U.S. 740, 771 (1961), a number of courts of appeals have held that such a system is permissible as long as the excessive collections are held in escrow and not spent.[6] On the other hand, one circuit —the Sixth—has held that even the use of an escrow system does not justify a union's collection of a fee that "include[s] amounts which are undisputedly unrelated to the collective bargaining functions of the union, and which cannot be collected from objecting employees." *Damiano v. Matish*, 830 F.2d 1363, 1370 (6th Cir. 1987). *See also Tierney v. City of Toledo*, 824 F.2d 1497, 1502-03 (6th Cir. 1987) (*Tierney I*) (union is not free "to have any sum collected, even if placed in escrow, which would unquestionably represent ideological expenses of the union"); *Tierney v. City of Toledo*, 917 F.2d 927, 937 (6th Cir. 1990) (*Tierney II*) (to same effect).[7]

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[6] Consequently (and again relying on decisions of this Court), the courts that have rejected the need for an "advance reduction" have reasoned that a union satisfies the constitutional requirements if it provides either "advance reduction of dues and/*or interest-bearing escrow accounts*" so as to ensure that objectors' funds are never spent for nonchargeable matters. *Ellis v. Railway Clerks*, 466 U.S. 435, 444 (1984) (emphasis added), *quoted in Hudson*, 475 U.S. at 303-04.

The judges in the court below agreed that four circuits have expressed this view. *See* Pet. App. at 5a n.2 (majority opinion, per Kozinski, J.); *id.* at 26a-27a (original panel opinion, per Brunetti, J.) (subsequently withdrawn). Petitioners acknowledge two circuits as having expressed this view, but they assert that the other cases cited by the court below are equivocal. *See* Pet. at 20-21.

[7] Petitioners cite in addition *Hohe v. Casey*, 956 F.2d 399 (3d Cir. 1992). Although the court there stated that "[i]n calculating the fair share fee, a union is required to determine an appropriate advance deduction," *id* at 414, the court did not discuss the point, nor did it cite any authority for the requirement of an "advance" deduction. Furthermore, the question before the court was not

Although we believe that the Sixth Circuit is wrong on the issue it decided,[8] there is no need for present purposes to pursue the point. The concerns expressed in the Sixth Circuit cases cited by petitioners, which refer to the collection of money "which would unquestionably represent ideological expenses of the union," simply are not implicated here. As we have shown, SBTA sets its agency fee and calculates the portion of the fee that is chargeable to objecting nonmembers on *an annual basis*; and that approach clearly is allowed by *Hudson*. *See* 475 U.S. at 307 (notice should explain what proportion of "the Union's total annual expeditures" is considered chargeable); *id.* at n.18 ("the Union cannot be faulted for calculating its fee on the basis of its expenses during the preceding year"). And petitioners did *not* pay, even into escrow, more than the chargeable amount for the school year in question. *See supra* at 5, 7-9.

Petitioners' reliance on the general proposition that agency fee collection procedures should be designed to "minimize the infringement" of First Amendment rights,

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whether there was a need for an *advance* reduction as such, but whether the union had used a proper method for determining *the appropriate chargeable proportion* of the fee.

[8] Through imaginative use of italics, ellipsis, and quotation out of context, petitioners attempt to create the impression that this Court held in *Hudson* that an "advance reduction" is required. *See* Pet. at 12-15. That is not the case. The *Hudson* Court's carefully worded holding, quoted *supra* at 2, contains no mention of such a requirement, nor does the opinion contain any discussion as to the need for an advance reduction. The union in *Hudson used* an advance reduction system; and, because the notice sent by the union took the form of an explanation as to how the union had made the chargeability determinations embodied in the union's calculation of the advance reduction, the Court referred to the advance reduction in discussing the inadequacy of the information that had ben provided in the notice. *See* 475 U.S. at 295, 306-07, 309. But the Court's discussion was directed at the question of *adequacy of notice*, not at any requirement of *advance reduction* as such.

Pet. at 19 (quoting *Hudson*, 475 U.S. at 303-07 & n.20), is likewise misplaced. The payment schedule used by SBTA has no greater impact on First Amendment rights than does the schedule advocated by petitioners. It is obvious, and petitioners do not deny, that the interest in *avoiding compelled subsidization of ideological activities* —which *Hudson* identified as the right at issue in agency fee cases, *see* 475 U.S. at 302—is fully protected by an escrow procedure, without the need for any advance reduction. Seeking to escape the force of that fact, petitioners posit the existence of a separate and distinct First Amendment right not to be deprived of the use of one's money. *See* Pet. at 15-16. But, even assuming *arguendo* that such a "right" (nowhere mentioned in *Hudson*) might be recognized in some contexts,[9] the "right" is not implicated here in any meaningful way. As indicated, under SBTA's payment schedule, the objecting nonmember is not deprived of any money that SBTA "is not entitled to keep," Pet. at 14, and, indeed, the objector actually "makes a profit" during the course of the school year. *See supra* at 7-9 & n.5.

In sum, to the extent that the circuits have expressed differing views on the question of the need for an "advance reduction," they have done so with reference to situations where a union collects a greater amount from objecting nonmembers than that to which it is entitled. Because SBTA does not do this, petitioners' "advance reduction" argument reflects nothing more than their personal preference for one payment schedule rather than another, and does not present a constitutional question that warrants review by this Court.[10]

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[9] That is a dubious assumption at best. *See* Pet. App. at 7a; *Arcara v. Cloud Books, Inc.*, 478 U.S. at 697, 705-06 (1986).

[10] We need not consider whether other questions might be presented if there were *no* reason for SBTA to have used the payment schedule that it did. The parties have *stipulated* that there were legitimate reasons for SBTA's choice. *See supra* at 6, Peti-

II. THE "ADVANCE NOTICE" ISSUE

SBTA sent its *Hudson* notice in mid-October, which was some two weeks after the first monthly agency fee deduction was made. Petitioners maintain that in approving this sequence of events, the decision below "conflicts with this Court's decision in *Hudson* and decisions of other United States Courts of Appeals." Pet. at 25. In point of fact, there is no such conflict, and the "advance notice" issue presented by petitioners is of no constitutional significance.

A. Petitioners make no attempt to indicate what constitutional purpose might be served by advancing the sending of the notice, and in point of fact there is none. *Hudson* makes it clear that a union need not provide any kind of hearing before agency fees are collected. Rather, the union's obligation is to provide a "reasonably prompt" hearing *after the fees have been collected*, and to place the disputed funds "[in] escrow . . . while . . . challenges are pending." 475 U.S. at 310. Thus, *Hudson* does *not* require unions to consider objections in advance of the post-collection hearing, and no court has imposed such a requirement.

Because objections need not be considered until the post-collection hearing is conducted, the purpose of the notice is fully served as long as (1) the notice is received sufficiently in advance of the hearing to enable nonmembers to exercise their right to object and to prepare for the hearing,[11] and (2) all nonmembers are treated as

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tioners miss the point in characterizing these reasons as matters of "administrative convenience" that cannot justify an infringement of First Amendment rights. *See* Pet. at 17-20. As we have noted, SBTA's payment schedule works no infringement beyond what would be entailed by the payment schedule proposed by petitioners themselves.

[11] It is axiomatic that "[t]he purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending 'hearing.'" *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 14 (1978).

objectors, with their fee payments held in escrow, until they have received the notice and the deadline for filing objections has passed.

If those steps are taken, there is absolutely no reason why the notice should have to precede the first monthly payroll deduction. Judge Kozinski put the point well in his dissent from the original panel decision in this case:

> Nothing would be gained by giving nonmembers the information before any deductions are made. The relevant event is not the commencement of the deductions but the deadline for requesting a refund or review by an impartial arbitrator. Notice, after all, must have a purpose. The purpose here is to allow nonmembers to make a meaningful decision in exercising their right to object. So long as the union provides adequate information well in advance of the time when nonmembers must raise their objections, the purpose of notice is amply served.

Pet. App. at 35a.

It is undisputed that the notices in this case were sent in sufficient time to enable nonmembers to exercise their right to object and to prepare for the arbitration hearing. It also is undisputed that all agency fees collected were escrowed until nonmembers had received the notice and had declined to object. Hence the objecting nonmembers' rights were fully protected.[12]

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[12] We can conceive of only one set of circumstances under which the challenged sequence of events would present a constitutional issue. *If* under a union's agency fee collection procedure, the first agency fee deduction included money which the union was not legally permitted to keep, and *if* (as the Sixth Circuit has held) the mere collection of such money, even though it is kept in escrow, violates the First Amendment rights of objecting nonmembers, it then would be constitutionally necessary to notify nonmembers and afford them the opportunity to object before the first agency fee deduction took place. But that is not this case. As shown in Part I above, under SBTA's agency fee collection procedure, neither the pre-notice deduction, nor indeed any subsequent deduction, includes any money that SBTA is not entitled to keep.

B. Petitioners' effort to portray a conflict among the circuits on this issue, *see* Pet. at 27-29, is unavailing. Petitioners cite language from *Tierney I*, *supra*, 824 F.2d at 1503, 1506, but that language is dictum, because the agency fee collection procedure in that case failed to provide notice *before the deadline for filing objections*. *Id.* at 1506. Petitioners cite *no* case in which an agency fee notice *that preceded the deadline for filing objections* was held to be untimely merely because it came shortly after the first monthly deduction had been made—much less any case that imposed such a hard and fast rule where, as here, notice was sent at the *earliest practicable point*. *See supra* at 4.[13]

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[13] In addition to *Tierney I*, petitioners cite *Dean v. TWA*, 924 F.2d 805 (9th Cir. 1991) (agency fees); *Dashiell v. Montgomery County*, 925 F.2d 750 (4th Cir. 1991) (agency fees); *Schneider v. Colegio de Abogados*, 917 F.2d 620 (1st Cir. 1990), *cert. denied*, —— U.S. ——, 112 S.Ct. 865 (1992) (bar dues); *Galda v. Bloustein*, 686 F.2d 159 (3d Cir. 1982), *cert. denied*, 475 U.S. 1065 (1986) (student fees). *See* Pet. at 28-29. None of these cases is on point. In *Dean* the union had not sent a notice at any time. In *Dashiell* the issue on appeal concerned the contents of the notice, not the timing thereof; and the court affirmed a judgment in favor of the union. In *Schneider* the court said that "one way for an objection procedure to work" would be for notice to be given "at the beginning of the due year," 917 F.2d at 635 n.22, but the court did *not* state that this was the *only* way a lawful system could work, nor did the court define precisely what it meant by "the beginning" of the dues year. Finally, *Galda* involved no question of timeliness of notice as such; it involved the question whether student fees compulsorily collected could lawfully be *spent* for non-chargeable purposes, with the objector receiving a refund only after the funds had been spent. In dictum the court cited with a "cf." a law review note in which the author advocated that unions should be required to give advance notice to agency fee payers so as "[to] allow disputes concerning the permissibility of any given expenditure to be resolved *before* an employee has parted with his money." Kenneth L. Karst, *The Supreme Court, 1976 Term—Foreward: Equal Citizenship Under the Fourteenth Amendment*, 91 Harv. L. Rev. 1, 198 (1977) (emphasis in original). As we have noted, *Hudson* subsequently made it clear that unions need

In sum, petitioners' challenge to the timing of SBTA's notice does not present an issue that warrants review by this Court.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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not establish systems which will enable objections to be resolved before fees are collected.

Petitioners' suggestion that *Hudson* itself requires notice prior to the first monthly deduction, *see* Pet. at 25-27, is entirely unfounded. Petitioners rely on the statement in *Hudson* that "constitutional requirements for the Union's collection of agency fees include an adequate explanation of the basis for the fee." 475 U.S. at 310. Underscoring the word "collection" in that sentence, as petitioners do, *see* Pet. at 26, cannot convert the sentence into a statement that the notice must precede the first monthly deduction. *Hudson* contains no suggestion of such a rule.

Petitioners also cite cases from other contexts in which notice has been held to be required before property is taken. *See* Pet. at 27. But those are all contexts in which the cited cases held that a pre-deprivation *hearing* was required. It is well established that the nature and timing of constitutionally adequate notice and hearing depends on the particular context involved, *see generally Matthews v. Eldridge*, 424 U.S. 319 (1976), and *Hudson* settles the point that in the agency fee context, unlike the contexts cited by petitioners, a pre-collection hearing is *not* required. As we have shown, it follows that pre-collection *notice* likewise is not required.